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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

JAMES M. CLEAVENGER,

Case No. 6:13-cv-01908-DOC

Plaintiff,

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S OPPOSED MOTION TO
POSTPONE PLAINTIFF'S
DEPOSITION**

vs.

**UNIVERSITY OF OREGON (an Agency and
Instrumentality of the State of Oregon), et al.,**

Defendants.

Defendants oppose Plaintiff's Motion to Postpone Plaintiff's Deposition, unless Plaintiff becomes too physically ill to attend his deposition.

Plaintiff brings his motion under Fed.R.Civ.P. 6, 16, and 37, but those rules by their terms are not applicable. Plaintiff's motion is a motion for protective order under Fed.R.Civ.P. 26(c). Plaintiff seeks an order postponing his deposition from October 9 and 10, 2014, to a date after he is able to find an attorney to represent him in this case.

Under Fed.R.Civ.P. 26(c), “[t]he court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense[.]”

There is not good cause for postponing Plaintiff’s deposition.

Defendants’ position is set forth in the emails Defendants’ attorneys sent Plaintiff on October 6 and 7, 2014, true copies of which are attached hereto as Exhibit 1. Defendants object to the postponement because (1) the postponement may interfere with Defendants’ ability to complete discovery by the deadline of December 2, 2014; (2) the case is almost a year old, it has already been stayed once, and the discovery deadline has already been extended twice; and (3) Plaintiff has had ample time to find an attorney since the lawsuit was filed almost a year ago and in the two months since Defendants scheduled Plaintiff’s deposition and issued the notice of his deposition.

Under these circumstances, the court should deny Plaintiff’s motion.

DATED this 8th day of October, 2014.

HARRANG LONG GARY RUDNICK P.C.

By: s/ Jens Schmidt
Jens Schmidt, OSB #843417
Andrea D. Coit, OSB #002640
Attorneys for Defendants

Jens Schmidt

From: Jens Schmidt
Sent: Tuesday, October 07, 2014 2:37 PM
To: James Cleavenger
Cc: Andrea Coit; Pamela Peake
Subject: RE: Request to Postpone my Deposition

James,

Yes, our position remains that we object to a postponement of your deposition unless you are too physically ill to participate.

Jens

From: James Cleavenger [mailto:jamescleavenger@hotmail.com]
Sent: Tuesday, October 07, 2014 2:23 PM
To: Jens Schmidt
Cc: Andrea Coit; Pamela Peake
Subject: RE: Request to Postpone my Deposition

Jens,

I can certainly understand your position and concerns. However, I feel it is in my best interests to file an expedited motion with the court seeking an order to postpone my deposition until I can secure counsel. I am okay with doing the deposition *before* mediation, so hopefully (if the motion is granted) we can reschedule it sooner rather than later. I simply want counsel present for the deposition. I have been in contact with three more attorneys/firms today (Greg Kafoury, Jennifer Middleton, and Shelley Russell & Craig Crispin), all of whom expressed general interest in taking the case but need further time to review documents and are *not* available to defend me at Thursday's deposition.

I'll also be drafting the motion based on the fact that I'm still sick (a simple cold I hope). I went home sick yesterday, came in late today and will also be leaving early today for the same reason (and to draft the motion). Needless to say, I have not been able to do any prep for the deposition. Judge McShane himself can attest to the legitimacy of my illness if necessary. It's also worth noting that the trial I was recently assigned that was supposed to start October 20th has just today been postponed to January due to one of the attorneys being diagnosed with walking pneumonia. I mention this not to allude that I may have this ailment too, only to let you know that I will have more availability in October than originally anticipated, in case we do have to reschedule.

I'm leaving work now to go home and draft the motion. I'm hoping to have it in by the end of the day, but if not it will be filed first thing tomorrow morning. I'll assume your position (opposing the motion) will not change unless you email or call me.

If the motion is denied or not ruled on in time, I'll be there on Thursday, prepared or not and sick or not.

Thanks for your time.

-James Cleavenger, JD, LLM
503-990-9368

From: Jens.SCHMIDT@harrang.com
To: jamescleavenger@hotmail.com
CC: Andrea.COIT@harrang.com; Pamela.PEAKE@harrang.com
Subject: RE: Request to Postpone my Deposition
Date: Mon, 6 Oct 2014 21:43:17 +0000

James,

I do not want to postpone your deposition.

I am concerned that postponing your deposition will interfere with the defendants' ability to complete discovery on time. I expect that your deposition testimony may prompt me to want to take other depositions. I do not want to delay finding out from your testimony that I need to schedule additional depositions. We have a December 2 discovery deadline, and this past Friday you gave Andrea a list of 28 persons you want to depose. Completing those depositions and any additional depositions the defendants want to take before the discovery deadline will already be a challenge. I do not want to compound that time pressure by postponing your deposition. We need to press ahead with discovery.

I do not know Judge Carter and his case management practices, so I cannot share your confidence that he will grant another extension of the discovery deadline. The lawsuit has already been stayed once, and the discovery deadline has already been extended twice, and we have not even started depositions.

I also do not agree that rescheduling your deposition for after the mediation will necessarily lead to a more productive mediation session. We may find out that the opposite is true. Conducting your deposition before the mediation will leave me better informed about your claims and that, I would hope, would lead to a more productive mediation session.

Finally, you have had ample time since the lawsuit was filed almost a year ago, and ample time since we served you on August 7 with our notice of your deposition, to find an attorney.

Under these circumstances, defendants object to a postponement of your deposition.

Jens

From: James Cleavenger [mailto:jamescleavenger@hotmail.com]

Sent: Monday, October 06, 2014 11:42 AM

To: Andrea Coit; Pamela Peake; Jens Schmidt

Subject: Request to Postpone my Deposition

Dear Andrea & Jens;

It turns out that after review of some of the documents I sent to Cindy Danforth, she has found a conflict of interest based on her prior representation of a client "whose conduct is at issue in my case." I do not know who she is referring to, but she cannot take the case. Margaret Wilson will not take the case without Danforth. The law firm of Bennett, Hartman, Morris & Kaplan also found a conflict that they informed me of today.

I think it would be unwise for me to attend my deposition without representation, especially considering the environment it will take place in (with all the defendants present, etc.). It is highly doubtful I can retain someone in such short notice, so **I am hereby requesting a postponement of my deposition in order for me to retain counsel.**

In terms of logistics, we may want to consider rescheduling my deposition for *after* the Mediation with Judge Hogan. Because while I feel I should have counsel for my deposition (and for everything moving forward after that), I do *not* necessarily feel I'd need counsel for the mediation. And this would give me plenty of time to secure counsel for my deposition if it were rescheduled for November. It was also Jens' initial idea to attempt mediation before depositions anyway (if I am remembering our conversation correctly).

I'm fairly certain Judge Carter would grant us another extension for these purposes (to attend mediation and secure counsel).

Please let me know if this (rescheduling my deposition) is possible or if I will need to file a motion with the court.

I also left work early today due to a pretty nasty head cold that came on yesterday. Hopefully it will clear up soon. Danforth has given me some additional referrals and I have some others as well, and I will be emailing them today but may not be as responsive as normal to my emails due to illness (just FYI).

I sincerely apologize for any inconvenience this has caused you and your clients. It is not my intention to unduly delay proceedings.

Thank you for your time and understanding.

Sincerely,

-James Cleavenger, JD, LLM

CERTIFICATE OF SERVICE

I certify that on October 8, 2014, I served or caused to be served a true and complete copy of the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFF'S OPPOSED MOTION TO POSTPONE PLAINTIFF'S DEPOSITION** on the party or parties listed below as follows:

- ☒ Via CM / ECF Filing
- ☐ Via First Class Mail, Postage Prepaid
- ☐ Via Email
- ☐ Via Personal Delivery

James M. Cleavenger
405 E. 8th Avenue #5700
Eugene, OR 97401
Plaintiff Pro Se

HARRANG LONG GARY RUDNICK P.C.

By: s/ Jens Schmidt
Jens Schmidt, OSB #843417
Andrea D. Coit, OSB #002640
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CERTIFICATE OF SERVICE